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**UNITED STATES BANKRUPTCY COURT**

**DISTRICT OF NEVADA**

In re

CASH CLOUD, INC.,  
dba COIN CLOUD,

Debtor.

Case No. BK-23-10423-mkn

Chapter 11

**DECLARATION OF BRETT A.  
AXELROD IN SUPPORT OF  
DEBTOR'S OBJECTION TO  
ADMINISTRATIVE EXPENSE CLAIM  
OF AVT NEVADA, L.P.**

Hearing Date: October 19, 2023

Hearing Time: 10:30 a.m.

I, Brett A. Axelrod, hereby declare as follows:

1. I am a partner of Fox Rothschild, which maintains offices at, among other locations:  
1980 Festival Plaza Drive, Suite 700, Las Vegas, Nevada 89135.
2. I am over the age of 18, am mentally competent, have personal knowledge of the facts  
in this matter, except where stated as based upon information and belief, and if called upon to testify,  
could and would do so.

3. I make this statement in support of Debtor's *Objection to Administrative Expense Claim of AVT Nevada, L.P.* (the "Objection").<sup>1</sup>

4. On June 28, 2023, the Court held a hearing on the Sale Motion, at which AVT made an oral objection to the sale of the Equipment on the basis that it was subject to a lease (the "AVT Oral Objection"). The Court overruled the AVT Oral Objection on the record because AVT had filed the AVT Secured Claim, conceding that the Master Lease Agreement was secured financing (not a lease).

5. The Court also overruled the AVT Oral Objection in the *Order: (A) Confirming Auction Results; (B) Approving the Sale of Certain of Debtor's Assets to Heller Capital Group, LLC, and Genesis Coin, Inc., Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (C) Authorizing the Assumption and Assignment of Certain of the Debtor's Executory Contracts and Unexpired Leases Related Thereto; and (D) Granting Related Relief* [ECF No. 795] (the "Sale Order"), a true and correct copy of which is attached hereto as **Exhibit A**. See Exhibit A, p. 3, ¶ M.

6. The Sale Order treated AVT as a secured creditor, with a lien on the proceeds of the Equipment included in the purchased assets. See Exhibit A, p. 6, ¶ 14 ("The prepetition and postpetition Liens of . . . AVT Nevada L.P. ("AVT") . . . shall immediately attach to the proceeds of the Sales in the same nature, validity, priority, extent, perfection, and force and effect that such secured claims had on the Purchased Assets immediately prior to Closing").

I declare under penalty of perjury under the laws of the United States of America that the foregoing statements are true and correct to the best of my knowledge, information and belief.

DATED this 19th day of September 2023.

/s/Brett Axelrod  
BRETT AXELROD

<sup>1</sup> Capitalized terms not defined herein shall have the meanings assigned to them in the Objection.

# **EXHIBIT A**



Honorable Mike K. Nakagawa  
United States Bankruptcy Judge



Entered on Docket  
June 30, 2023

BRETT A. AXELROD, ESQ.  
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**UNITED STATES BANKRUPTCY COURT**  
**DISTRICT OF NEVADA**

In re

CASH CLOUD, INC.,  
d/b/a COIN CLOUD,

Debtor.

Case No. BK-23-10423-mkn

Chapter 11

**ORDER: (A) CONFIRMING AUCTION RESULTS; (B) APPROVING THE SALE OF CERTAIN OF DEBTOR'S ASSETS TO HELLER CAPITAL GROUP, LLC, AND GENESIS COIN, INC., FREE AND CLEAR OF LIENS CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS; (C) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN OF THE DEBTOR'S EXECUTORY CONTRACTS AND UNEXPIRED LEASES RELATED THERETO; AND (D) GRANTING RELATED RELIEF**

Hearing Date: June 28, 2023  
Hearing Time: 10:30 a.m.

The Court having reviewed and considered the Debtor's *Motion for Order (A) Confirming Auction Results; (B) Approving the Sale of Certain of Debtor's Assets to Heller Capital Group, LLC and Genesis Coin, Inc. Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (C) Authorizing the Assumption and Assignment of Certain of the Debtor's Executory Contracts and Unexpired Leases Related Thereto; and (D) Granting Related Relief* [Docket No. 714; as amended by Docket No. 730] (the "Motion"),<sup>1</sup> the *Declaration of Daniel Ayala* [Docket No. 715], the *Declaration of Daniel Moses* [Docket No. 716], the *Declaration of Daryl Heller* [Docket No. 717], and the *Declaration of Jorge Fernandez* [Docket No. 718] in support thereof, and any objections thereto, and the arguments of counsel made, and the evidence adduced at the hearing before the Court on June 28, 2023 (the "Sale Hearing"); and upon the record of the Sale Hearing and this Chapter 11 Case and proceedings, and after due deliberation thereon; and the Court having determined that the relief sought in the Motion is in the best interests of Debtor, its creditors and all parties in interest; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein, therefore:

**THE COURT HEREBY FINDS AND CONCLUDES AS FOLLOWS:<sup>2</sup>**

A. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334, and over the persons and property affected hereby.

B. Consideration of the Motion constitutes a core proceeding under 28 U.S.C. § 157(b)(2).

C. Venue for this case and proceedings on the Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

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<sup>1</sup> Capitalized terms not defined herein shall have the meanings ascribed to them in the Motion.

<sup>2</sup> The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent that any of the following conclusions of law constitute findings of fact, they are adopted as such. Any findings of fact or conclusions of law stated by the Court on the record at the Sale Hearing are hereby incorporated, to the extent they are not inconsistent herewith.

1 D. The statutory and legal predicates for the relief requested in the Motion and provided  
2 for herein are Bankruptcy Code sections 105(a), 363(b), 363(f), 363(m) and 365, Bankruptcy Rules  
3 2002, 6004, 6006, 9007, 9008 and 9014, and Local Rules 2002, 6004, 6006 and 9014.

4 E. The Court's *Order Establishing Bidding Procedures and Related Deadlines* [Docket  
5 No. 483] (as amended by Docket Nos. 538 & 648, the "Bidding Procedures Order"), among other  
6 things, approved the Bidding Procedures attached thereto as Exhibit A, and authorized the Debtor to  
7 sell all or substantially all of its assets pursuant to the Bidding Procedures.

8 F. One or more Qualified Bids having been timely submitted, pursuant to the Bidding  
9 Procedures Order, the Debtor held the Auction on June 2, 2023, at the offices of Fox Rothschild,  
10 1980 Festival Plaza Drive, Suite 700, Las Vegas, Nevada 89135. At the Auction, the Debtor selected  
11 Heller Capital Group, LLC ("Heller Capital"), Genesis Coin, LLC ("Genesis Coin") and Mr.  
12 Christopher McAlary as the Winning Bidders for separate sets of Assets.

13 G. The Debtor timely filed with the Court and served on the Debtor's mailing matrix the  
14 *Notice of Auction Results Regarding Sale of Substantially All of the Debtor's Assets* [ECF No. 618,  
15 corrected by ECF No. 621].

16 H. On June 16, 2023, the Debtor filed the Motion,<sup>3</sup> seeking the Court's authority to:  
17 (1) sell the Heller Assets, and assume and assign the Assumed Contracts (as defined below), to Heller  
18 pursuant to the Heller APA; and (2) sell the Genesis Coin Assets to Genesis Coin pursuant to the  
19 Genesis Coin APA (collectively, the "Sales").

20 I. The Debtor served its *Notice of Bidding Procedures and Deadlines* [ECF No. 511,  
21 Exhibit H] in the manner required by the Bidding Procedures Order and adequate notice of Bid  
22 Procedures, the Auction and the Sales has been given.

23 J. The Court has received sufficient information to find that: (1) the Heller APA  
24 represents the highest or otherwise best offer for the Heller Assets; (2) the Genesis Coin APA  
25 represents the highest or otherwise best offer for the Genesis Coin Assets; and (3) each of Heller  
26 Capital and Genesis Coin (collectively, the "Winning Bidders" or "Purchasers") is a "good faith  
27

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28 <sup>3</sup> On June 20, 2023, the Debtor filed an amendment to the Motion.

1 purchaser” for purposes of Section 363(m) of the Bankruptcy Code.

2 K. The Court has received sufficient information to find that the Estate’s right, title and  
3 interest in and to the Heller Assets and the Genesis Coin Assets (collectively, the “Purchased Assets”)  
4 may be sold to the Winning Bidders free and clear of all liens, claims, interests, and encumbrances  
5 (except as otherwise set forth in the Heller APA and Genesis Coin APA (collectively, the “Purchase  
6 Agreements”)), including any claims based on successor, transferee, or environmental liability, on  
7 the terms set forth in the Purchase Agreements pursuant to Section 363(f) of the Bankruptcy Code  
8 because, with respect to each of such liens, claims, interests, and encumbrances: (1) applicable  
9 nonbankruptcy law permits the sale of the Purchased Assets free and clear of such liens, claims,  
10 interests, and encumbrances; (2) the entities holding such liens, claims, interests, and encumbrances  
11 have consented to the sale of the Purchased Assets free and clear of such liens, claims, interests, and  
12 encumbrances; (3) the Purchase Price (as defined in the Purchase Agreements) exceeds the aggregate  
13 value of all such liens, claims, interests, and encumbrances; (4) such liens, claims, interests, or  
14 encumbrances are in bona fide dispute; or (5) the entities holding such liens, claims, interests, and  
15 encumbrances can be compelled, in a legal or equitable proceeding, to accept a money satisfaction of  
16 such liens, claims, interests, and encumbrances.

17 L. Heller Capital has provided the non-Debtor parties to all Assumed Contracts with  
18 sufficient information about its financial wherewithal that, combined with its payment of the cure  
19 costs associated with such Assumed Contracts, constitutes adequate assurance of future performance  
20 under such Assumed Contracts pursuant to Section 365(b) of the Bankruptcy Code.

21 M. The Court has considered and overruled any and all objections to the Motion and the  
22 Sales, including the oral objection made by AVT (as defined below) at the Sale Hearing, and  
23 determined that the Sales and entry of this Order at this time is in the best interests of the Debtor, the  
24 Estate and its creditors and other parties in interest.

25 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

- 26 1. The Sales and Purchase Agreements are approved, subject to the terms of this Order.
- 27 2. The Debtor is authorized and directed to enter into and perform its obligations under
- 28 the Purchase Agreements to the extent provided therein, and to take such further actions as the Debtor

1 deems necessary to effectuate the Sales. The Winning Bidders are authorized and directed to enter  
2 into and perform their obligations under the Purchase Agreements.

3 3. The Winning Bidders and the Debtor are authorized to make modifications to the  
4 Purchase Agreements and documents related thereto not materially inconsistent with the economic  
5 and other terms of the Sales, in consultation with the Consultation Parties, by mutual agreement on  
6 or after the date of this Order.

7 4. The Court hereby approves the transfer of all of the Debtor's and the Estate's right,  
8 title and interest in and to the Purchased Assets, to the Winning Bidders, free and clear of all liens,  
9 claims, interests and encumbrances (except as otherwise set forth in the Purchase Agreements),  
10 including any claims based on successor, transferee or environmental liability, on the terms set forth  
11 in the Purchase Agreements, pursuant to Section 363(f) of the Bankruptcy Code.

12 5. The only liabilities assumed by Winning Bidders are as specifically set forth in the  
13 Purchase Agreements, including the Assumed Liabilities (as defined in the Heller APA), the Seller  
14 Note and the Guaranty (each as defined in the Genesis Coin APA).

15 6. Neither Purchaser shall be deemed to: (a) be the successor of or successor employer  
16 (as described in COBRA and applicable regulations thereunder) to the Debtor, including with respect  
17 to any workers' compensation Liabilities, collective bargaining agreements and any benefit plans,  
18 any common law successor liability in relation to any pension plan, including with respect to  
19 multiemployer withdrawal liability, and/or in relation to any employee, (b) have, de facto, or  
20 otherwise, merged with or into the Debtor, (c) be a mere continuation or substantial continuation of  
21 the Debtor or the enterprise(s) of the Debtor, or (d) be liable for any acts or omissions of the Debtor  
22 in the conduct of the Debtor's business or arising under or related to the Purchased Assets or  
23 employees or former employees of the Debtor other than as expressly set forth in the Purchase  
24 Agreements. Without limiting the generality of the foregoing, and except as otherwise provided in  
25 the Purchase Agreements, the Parties intend that Purchasers shall not be liable for any encumbrances  
26 or liabilities, pledges, options, charges, liabilities, liens, claims (as defined in section 101(5) of the  
27 Bankruptcy Code), or interests (including, without limitation, the Excluded Liabilities but other than  
28 Assumed Liabilities) of or against the Debtor or any of its predecessors or Affiliates, and Purchasers



1 shall have no successor or vicarious liability of any kind or character whether known or unknown as  
2 of the Closing Date (as defined within the Heller APA and Genesis Coin APA), whether now existing  
3 or hereafter arising, or whether fixed or contingent, with respect to the Purchased Assets or any  
4 Liabilities of the Debtor arising prior to the Closing Date. Except as otherwise provided in the  
5 Purchase Agreements, including with respect to the Assumed Liabilities (to the extent expressly  
6 authorized by the Purchase Agreements), the Seller Note and the Guaranty, any and all persons or  
7 entities are hereby enjoined from pursuing against Purchasers any claim, cost, expense or liability of  
8 any type or nature, arising prior to the Closing Date, related in any way to the Debtor or its business  
9 or assets (including without limitation the claims and liabilities referenced in this Order that are not  
10 expressly assumed by Purchasers in writing) (collectively, the “Enjoined Liabilities”); provided,  
11 however, that nothing in this Order shall relieve Heller Capital or Apollo Management, LLC  
12 (“Apollo”) from its obligations under that certain Interim Management Services Agreement or limit  
13 the Debtor’s right to enforce such agreement, and this Order may be relied on by Purchasers as a fully  
14 enforceable injunction at any time in any forum against any and all such Enjoined Liabilities.

15 7. This Order shall not affect the rights of licensees reserved under Section 365(n) of the  
16 Bankruptcy Code, with respect to any license rejected or deemed rejected by the Debtor.

17 8. Each of the Winning Bidders (a) is each hereby found to be a “good faith” purchaser  
18 for purposes of Section 363(m) of the Bankruptcy Code, and (b) shall have all the rights and privileges  
19 of a “good faith purchaser” for purposes of Section 363(m) of the Bankruptcy Code.

20 9. The assumption and assignment by the Debtor to Heller Capital of the executory  
21 contracts and unexpired leases listed on Exhibit A of the Heller APA (the “Assumed Contracts”) is  
22 approved.

23 10. The Debtor is hereby authorized and directed to assume the Assumed Contracts and  
24 assign the Assumed Contracts to Heller Capital.

25 11. The Cure Notices required under the Bidding Procedures Order have all been properly  
26 and timely served and any Contract Objections have been overruled or otherwise resolved. The  
27 effective date of the assignment of any Assumed Contract to the Heller Capital shall be the date that  
28 Heller has fully paid to the non-Debtor party any and all cure costs related to such Assumed Contract

(the “Contract Assignment Effective Date”). From and after the Contract Assignment Effective Date as to any Assumed Contract, Heller Capital shall be entitled to exercise all of the rights and privileges, and receive all benefits, available to it under such Assumed Contract, subject to the express provisions thereof.

12. Notwithstanding anything contrary in the papers and court filings for the auction, Sale, and assumption and assignment, including the Heller APA, the Debtor and Heller Capital adopt the limited objection of Brookfield Retail Properties, Inc. (ECF No. 757) as to the leases for the three properties it manages, Champaign Market Place LLC, Columbiana Centre, LLC, and Neshaminy Mall Joint Venture L.P. , including the (a) cure amounts and (b) the obligation to assume and assign the contract *cum onere* including the indemnification terms as to (1) claims of damages and destruction of the leases premises, and (2) claims relating to compliance with laws.

13. Upon Heller Capital’s payment of any and all cure costs related to such Assumed Contracts as indicated on Exhibit A of the Heller APA and as set forth in the Cure Notices, Heller Capital and the Debtor shall be deemed to have provided adequate assurances of future performance with respect to all such Assumed Contracts for purposes of Section 365 of the Bankruptcy Code.

14. The prepetition and postpetition Liens of CKDL Credit, LLC (the “DIP Lender”), Enigma Securities Limited (“Enigma”), Genesis Global Holdco, LLC (“Genesis”), AVT Nevada L.P. (“AVT”), or any other perfected secured creditor on the Purchased Assets (collectively, the “Secured Creditors”), shall immediately attach to the proceeds of the Sales in the same nature, validity, priority, extent, perfection, and force and effect that such secured claims had on the Purchased Assets immediately prior to Closing.

15. The Debtor has discontinued operations and has swept (or is in the process of sweeping) its DCMs and depositing the cash therein in its bank accounts. The Debtor is authorized and directed to timely make the following payments to DIP Lender to be applied by DIP Lender to reduce the DIP Obligations<sup>4</sup> until these obligations are paid in full:

a. \$3,250,000 on or before June 30, 2023;

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<sup>4</sup> As defined in ECF No. 315

b. \$ 750,000 on or before July 7, 2023; and

c. The balance of the DIP Obligations on such terms as the DIP Lender and the Debtor shall agree; provided, however, that notwithstanding the foregoing, the DIP Obligations shall be repaid in full, in cash, no later than the earlier of (i) July 21, 2023, or (ii) the closing of the Sales.

16. At the closing of the Sales, the Debtor is authorized and directed to pay any remaining DIP Obligations to the DIP Lender through the date of the closing of the Sales, as specified in and in accordance with the *Final Order Under Bankruptcy Code Sections 105, 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e) and Bankruptcy Rules 2002, 4001, 6004 and 9014(I) (I) Authorizing Debtor to (A) Obtain Post-Petition Financing and (B) Grant Adequate Protection* [Docket No. 315] (the “DIP Order”) provided that, in accordance with the DIP Order, the DIP Lender will recover first from Cash (as defined in the DIP Order) before recovering from any Sales proceeds.

17. The Debtor is authorized and directed to, pursuant to the Bid Procedures Order and the Stalking Horse Bid, (i) pay to RockItCoin, directly from Sales proceeds, the amount of the Break-Up Fee and Expense Reimbursement (as defined within the Bid Procedures Order and Stalking Horse Bid), in the amount of \$336,060.00 (the “RockItCoin Reimbursement”) at closing of the Heller Capital/Genesis Coin Sales (or the next business day after such closings occur), and (ii) return to RockItCoin its deposit held in escrow, in the amount of \$629,200.00 (to the extent not yet returned).

18. Within five (5) business days of the entry of this Order, the Debtor will prepare and deliver to the Committee and the Secured Creditors, a statement, together with a copy of all backup documentation (a “Calculation Statement”), setting forth the Debtor’s good faith calculation and reasonably detailed explanation of any costs and expenses that the Debtor asserts are payable to the Debtor’s estate in accordance with section 506(c) of the Bankruptcy Code (such asserted costs and expenses, the “Asserted Surcharge Claims”). The Debtor, the Committee and the Secured Creditors shall have ten (10) business days after the entry of this Order to consult in good faith regarding the Calculation Statement and the Asserted Surcharge Claims, if any (the “Consultation Period”). If the Asserted Surcharge Claims have not been otherwise resolved (the “Disputed Surcharge Claims”) by the expiration of the Consultation Period, the Debtor will file a motion (a “Surcharge Motion”) with

1 respect to the Disputed Surcharge Claims no later than five (5) Business Days after the expiration of  
2 the Consultation Period, such that the Surcharge Motion is scheduled to be heard by the Court no  
3 earlier than forty-five (45) days after the entry of this Order and no later than sixty (60) days after the  
4 entry of this Order.

5 19. After the DIP Obligations (as defined in the Final DIP Order [ECF No. 315]) have  
6 been paid in full, in cash, and the RockItCoin Reimbursement has been paid, on the later of (i) the  
7 date of the closing of the Sales and (ii) the date on which the Court enters an order with respect to the  
8 Surcharge Motion, the Debtor, after subtracting any Sales proceeds determined by the Court to be  
9 payable by the Secured Creditors to the Debtor's estate in accordance with section 506(c) of the  
10 Bankruptcy Code, is authorized and directed to pay the following to Secured Creditors:

- 11 a. to Enigma the Sale proceeds (the "Enigma Collateral Proceeds") allocated to  
12 collateral (the "Enigma Collateral") securing the Enigma Secured Claims (as  
13 defined in the DIP Order), up to the amount of the allowed Enigma Secured  
14 Claims (as specified in the DIP Order); provided that, upon the Closing of the  
15 Sales, the Debtor will (a) pay to Enigma the Enigma Collateral Proceeds to the  
16 extent such Enigma Collateral Proceeds are in excess of (1) the Disputed  
17 Surcharge Claims against Enigma and (2) any other Asserted Surcharge  
18 Claims that Enigma has agreed are payable to the Debtor's estate in accordance  
19 with section 506(c) of the Bankruptcy Code and (b) hold in escrow the  
20 remaining Enigma Collateral Proceeds for the sole use and purpose of  
21 distribution to Enigma or payment to the Debtor's estate in respect of the  
22 Disputed Surcharge Claims, in each case in accordance with the Court's order  
23 with respect to the Surcharge Motion or as otherwise mutually agreed in  
24 writing by the Debtor and Enigma. Enigma reserves all rights and defenses  
25 with respect to the existence of any Asserted Surcharge Claims and any  
26 Surcharge Motion and nothing in this Order shall constitute an admission that  
27 any Asserted Surcharge Claims are valid. For the avoidance of doubt, nothing  
28 in this Order waives, modifies, alters, or impairs the waiver of surcharge in

1 favor of the DIP Lender contained in paragraph 13 of the Final DIP Order  
2 [ECF No. 315]. The contents of this paragraph 18(a) shall be subject to the  
3 Committee's preserved challenge rights as to the Enigma Secured Claims.

4 b. to AVT the Sale proceeds (the "AVT Collateral Proceeds") allocated to  
5 collateral (the "AVT Collateral") securing the AVT secured claim to the extent  
6 such collateral is identified in that certain UCC Financing Statement, filed on  
7 May 12, 2020 and with initial filing number 2020095113-1 (*see* Claim No.  
8 38), and AVT's asserted security interest in such collateral is allowed pursuant  
9 to a final order of the Court (the "AVT Secured Claim"), up to the amount of  
10 the allowed amount of the AVT Secured Claim; provided that, upon the  
11 Closing of the Sales, the Debtor will (a) pay to AVT the AVT Collateral  
12 Proceeds to the extent such AVT Collateral Proceeds are in excess of (1) the  
13 Disputed Surcharge Claims against AVT and (2) any other Asserted Surcharge  
14 Claims that AVT has agreed are payable to the Debtor's estate in accordance  
15 with section 506(c) of the Bankruptcy Code and (b) hold in escrow the  
16 remaining AVT Collateral Proceeds for the sole use and purpose of distribution  
17 to AVT or payment to the Debtor's estate in respect of the Disputed Surcharge  
18 Claims, in each case in accordance with the Court's order with respect to the  
19 Surcharge Motion or as otherwise mutually agreed in writing by the Debtor  
20 and AVT. AVT reserves all rights and defenses with respect to the existence  
21 of any Asserted Surcharge Claims and any Surcharge Motion and nothing in  
22 this Order shall constitute an admission that any Asserted Surcharge Claims  
23 are valid. For the avoidance of doubt, nothing in this Order waives, modifies,  
24 alters, or impairs the waiver of surcharge in favor of the DIP Lender contained  
25 in paragraph 13 of the Final DIP Order.

26 c. to Genesis the Sales proceeds (the "Genesis Collateral Proceeds") allocated to  
27 the Genesis Collateral (as defined in the DIP Order) (other than the Enigma  
28 Collateral (as defined in, and subject to the Challenge Period set forth in, the

1 DIP Order), and the AVT Collateral), up to the amount of the allowed Genesis  
2 Secured Claims (including the amount set forth in the DIP Order); provided  
3 that, upon the closing of the Sales, the Debtor will (a) pay to Genesis the  
4 Genesis Collateral Proceeds to the extent such Genesis Collateral Proceeds are  
5 in excess of (1) the Disputed Surcharge Claims against Genesis and (2) any  
6 other Asserted Surcharge Claims that Genesis has agreed are payable to the  
7 Debtor's estate in accordance with section 506(c) of the Bankruptcy Code and  
8 (b) hold in escrow the remaining Genesis Collateral Proceeds for the sole use  
9 and purpose of distribution to Genesis or payment to the Debtor's estate in  
10 respect of the Disputed Surcharge Claims, in each case in accordance with the  
11 Court's order with respect to the Surcharge Motion or as otherwise mutually  
12 agreed in writing by the Debtor and Genesis. Genesis reserves all rights and  
13 defenses with respect to the existence of any Asserted Surcharge Claims and  
14 any Surcharge Motion and nothing in this Order shall constitute an admission  
15 that any Asserted Surcharge Claims are valid. For the avoidance of doubt,  
16 nothing in this Order waives, modifies, alters, or impairs the waiver of  
17 surcharge in favor of the DIP Lender contained in paragraph 13 of the Final  
18 DIP Order.

19 20. The Court shall retain jurisdiction to, among other things, interpret, implement, and  
20 enforce the terms and provisions of this Order and the Purchase Agreements, all amendments thereto  
21 and any waivers and consents thereunder and each of the agreements executed in connection  
22 therewith to which the Debtor is a party or which has been assigned by the Debtor to the Purchasers,  
23 and to adjudicate, if necessary, any and all disputes concerning or relating in any way to the Sales.

24 21. Any appeal seeking to enjoin or stay consummation of the Sales shall be subject to the  
25 appellant depositing or posting a bond equal to the then aggregate purchase price, and applicable  
26 damages, pending the outcome of the appeal.

27 22. All time periods set forth in this Order shall be calculated in accordance with  
28 Bankruptcy Rule 9006(a).

23. To the extent that this Order is inconsistent with any prior Order, the Purchase Agreements, any other document or pleading with respect to the Motion in this Chapter 11 Case, the terms of this Order shall govern.

24. This Order shall be effective immediately upon its entry, and the Court orders that the 14-day delay periods set forth in Federal Rules of Bankruptcy Procedure 6004(h) and 6006(d) shall not apply to stay the effectiveness of this Order. Time is of the essence in approving the Sales, and the Debtor and the Purchasers intend to, and are authorized to, close the Sales as soon as practicable, but no later than July 21, 2023 for the Heller APA, and according to the terms of Article III for the Genesis Coin APA.

Prepared and Respectfully Submitted by:

**FOX ROTHSCHILD LLP**

By /s/Brett A. Axelrod  
BRETT A. AXELROD, ESQ.  
Nevada Bar No. 5859  
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Las Vegas, Nevada 89135  
*Counsel for Debtor*

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1 **APPROVED:**

2 **SEWARD & KISSEL LLP**

3 By: /s/Catherine V. LoTempio

4 ROBERT J. GAYDA, ESQ.  
5 CATHERINE V. LOTEMPPIO, ESQ.  
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7 and

8 **MCDONALD CARANO, LLP**

9 RYAN J. WORKS, ESQ.  
2300 West Sahara Avenue, Suite 1200  
Las Vegas, NV 89102  
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21 **CERTIFICATION OF COUNSEL PURSUANT TO LOCAL RULE 9021**

22 In accordance with Local Rule 9021, counsel submitting this document certifies as follows:

- 23 ☐ The Court has waived the requirement of approval in LR 9021(b)(1).
- 24 ☐ No party appeared at the hearing or filed an objection to the motion.
- 25 ☒ I have delivered a copy of this proposed order to all counsel who appeared  
26 at the hearing, any unrepresented parties who appeared at the hearing, and  
27 each has approved or disapproved the order, or failed to respond, as  
28 indicated below:

23 Catherine V. LoTempio, Esq.  
24 SEWARD & KISSEL, LLP  
25 *Counsel for the Official Committee of*  
26 *Unsecured Creditors*

APPROVED

26 Jordi Gusó  
27 BERGER SINGERMAN LLP  
28 *Counsel to DIP Lender*

APPROVED

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4 *Counsel to Genesis Global Holdco LLC*

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23 Antonio Forte, Esq. APPROVED  
24 Kubs Lalchandani, Esq.  
25 LALCHANDANI SIMON PL  
26 *Counsel for Genesis Coin*

27 ☐ I certify that this is a case under Chapter 7 or 13, that I have served a  
28 copy of this order with the motion pursuant to LR 9014(g), and that no  
party has objected to the form or content of the order.

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